

1984 April 11

[L. LOIZOU, MALACHTOS, DEMETRIADES AND SAVVIDES, JJ.]

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Appellant,

v.

SAVVAS PETRIDES,

Respondent.

(Revisional Jurisdiction Appeal No. 243).

Public Officers—Appointments and promotions—Interview of candidates—Weight to be given to performance at interview.

Public Officers—Appointments and promotions—Schemes of service—Qualification constituting an additional qualification thereunder—Possessed by both the applicant and the interested parties—No specific reference was required to be made by the Commission to this additional qualification of the applicant—And no cogent and specific reasons ought to have appeared in its decision as to why he was not selected. 5

The respondent in this appeal, by means of a recourse, challenged the decision of the appellant Commission by virtue of which the two interested parties were appointed to the temporary post of Assistant Cultural Officer. The trial Judge annulled the said appointments having held: 10

- (a) That the Commission has given undue weight to the performance of the candidates during the interview; and 15
- (b) it failed to carry out an inquiry as to whether the applicant possessed a post-graduate qualification because the only documents before it were those of the applicant only. 20

Regarding (b) above though only the personal files and the confidential reports of the applicant were before the Commission, there were, also, before it the applications for appointment of all

the candidates, including those of the applicant and the interested parties in which there appeared the qualifications and the relevant certificates of the candidates, their profession or occupation from the completion of their education, their Government Service and other relevant requirements.

Upon appeal by the Commission:

Held, (1) that there is nothing in the minutes of the Public Service Commission of the 17th December, 1977, when the decision to appoint the two interested parties was taken, indicating that undue weight was placed on the impression of the candidates created by such interview, but, on the contrary, the Public Service Commission placed the proper weight which the facts and circumstances of the case deserved.

Held, further that, no doubt, the Commission in considering the merits, qualifications and experience and, generally, the suitability of a candidate to a given post, should also take into account the impression created by such candidate at the relevant interview but this Court does not agree with the proposition that such interview should be held only as a way of forming an opinion about the possession by the candidates of the required qualifications.

(2) That in dealing with the issue of the additional qualification of the applicant the trial Judge took it for granted that the interested parties did not possess this additional qualification; that on the assumption that the interested parties did not possess the additional qualification, the trial Judge relied on the case of *Tourpeki v. Republic* (1973) 3 C.L.R. 592 in support of his view that no proper inquiry was carried out and no due reasoning was given by the Public Service Commission as to why they did not select the applicant instead of the interested parties; that in the case in hand, both the applicant and the interested parties possessed the additional qualifications and so no specific reference was required to be made by the Public Service Commission in its decision to the additional qualification of the applicant and no cogent and specific reasons had to appear in its decision as to why the applicant was not selected (case of *Tourpeki*, supra, distinguished). Accordingly the appeal must be allowed.

Appeal allowed.

Cases referred to:

- Myrriotis v. Republic* (1975) 3 C.L.R. 58 at p. 68;
- Triantafyllides and Others v. Republic* (1970) 3 C.L.R. 235;
- Petrides and Another v. Republic* (1982) 3 C.L.R. 914 at p. 924.

Appeal.

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Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Hadjianastassiou, J.) given on the 16th December, 1980 (Revisional Jurisdiction Case No. 225/78)* whereby appellant's decision to promote the interested parties to the post of Assistant Cultural Officer in the Ministry of Education in preference and instead of the respondent was annulled.

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R. Gavrielides, Senior Counsel of the Republic, for the appellant.

A.S. Angelides, for the respondent.

G. Arestis, for interested party E. Constantinou.

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Ch. Ierides, for interested party St. HadjiStyllis.

Cur. adv. vult.

L. LOIZOU: The Judgment of the Court will be delivered by Mr. Justice Malachtos.

MALACHTOS, J.: This is an appeal against the first instance judgment of a Judge of this Court by which the decision of the Public Service Commission of the 17th December, 1977, which was published in the Official Gazette of the Republic of the 14th April, 1978, by virtue of which the two interested parties, namely, Elli Constantinou and Stelios Hadjistyllis were appointed to the temporary post of Assistant Cultural Officer, was annulled.

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According to the relevant scheme of service the post of Assistant Cultural Officer is a first entry post and the qualifications required are the following:

- (a) degree or title of a University or Polytechnic or a higher school of Arts or any other recognised equivalent higher school;
- (b) acquaintance on the literal and cultural movement in Cyprus and other countries;

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* Reported in (1981) 3 C.L.R. 57.

- (c) good knowledge of at least one of the most prevailing European languages;
- (d) a creative ability as an author or artist;
- 5 (e) a post-graduate education abroad and/or visits for studies in institutions abroad of similar activities, is considered as an additional qualification.

10 In response to the relevant publication in the Official Gazette of the Republic, sixteen applications were submitted to the Public Service Commission, including those of the applicant-respondent in this appeal, and the interested parties.

15 At its meeting of the 4th October, 1977, the Commission decided that twelve candidates should be invited for an interview on the 28th November, 1977 and that the Director-General of the Ministry of Education and the Cultural Officer should be present. On that day and in the presence only of the Cultural Officer, as the Director-General did not attend, the Commission interviewed the nine candidates who were present. The Members of the Commission, as well as the Cultural Officer of the Ministry of Education, namely, Mr. Serghis, put several 20 questions to these nine candidates on matters of general knowledge and on matters connected with the duties of the post and decided that another candidate, namely, Andreas Georghiou Thomas, who was abroad for post-graduate studies, be invited for an interview on the 17th December, 1977.

25 At the meeting of the Commission of the 17th December, 1977, and again in the presence only of the Cultural Officer, the Commission interviewed Mr. Andreas Georghiou Thomas and decided the filling of the two posts in question.

The relevant minutes of the Commission read as follows:

30 "The Commission interviewed Mr. Andreas Georghiou Thoma, who was unable to present himself for interview at the previous meetings of 28.11.1977 as he was in London for post-graduate studies.

35 The Commission as well as the Representative of the Ministry of Education put several questions to the above candidate on matters of general knowledge and on matters connected with the duties of the post as shown in the relevant scheme of service.

The Commission considered the merits, qualifications and experience of the above candidate together with those of the candidates who were interviewed at the meeting of 28.11.1977, as well as their performance during the interview (personality, alertness of mind, general intelligence and the correctness of answers to questions put to them, etc.) 5

The Personal Files and the Annual Confidential Reports of the candidates already in the service were also taken into consideration.

The Commission observed that, during the interview, Eleni S. Nikita, Elli Constantinou and Stelios Ach. Hadjistryllis, gave satisfactory replies to questions put to them. 10

The Representative of the Ministry of Education stated that Eleni S. Nikita, Elli Constantinou and Stelios Ach. Hadjistryllis were very good during the interview but that he would prefer Eleni S. Nikita and Elli Constantinou, having regard to their work which he knows as they had been working under him for some time. 15

Discussion then followed and the Commission unanimously agreed that Mrs. Elli Constantinou was the best candidate for the post of Assistant Cultural Officer. The Chairman as well as two of the Members of the Commission (namely Messrs. C. Lapas and Y. Louca) held also the view that Mr. Stelios Ach. Hadjistryllis should be preferred to Mrs. Eleni S. Nikita, having regard to their performance at the interview. 20 25

According to the relevant scheme of service, candidates for appointment to the post of Assistant Cultural Officer must possess 'a good knowledge of one of the prevailing European languages'. The Commission observed that both Mrs. Elli Constantinou and Mr. Stelios Ach. Hadjistryllis had studied in England for a number of years. In view of the above, the Commission was satisfied that the candidates in question did possess 'a good knowledge of English—i.e. one of the prevailing European languages'. 30 35

After considering all the above and after taking into consideration all the facts appertaining to each one of the

5 candidates and after giving proper weight to the merits, qualifications, abilities and experience of these candidates, as well as to their suitability for appointment to the above post as shown at the interview, the Commission came to the conclusion that the following candidates were on the whole the best. The Commission accordingly decided that the candidates in question be appointed to the temporary (Dev.) post of Assistant Cultural Officer w.e.f. 1.3.1978;

Elli Constantinou

10 Stelios Ach. Hadjistryllis

The decision regarding Mrs. Elli Constantinou was taken unanimously, whereas in the case of Mr. Stelios Ach. Hadjistryllis the decision was taken by majority of 3 votes to 2 (Messrs. D. Protestos and S.C. Catsellis dissenting).
15 Messrs. Protestos and Catsellis preferred Mrs. Eleni S. Nikita to Mr. Hadjistryllis”.

20 Although the applicant and the other candidates with whom we are concerned were at the time in the Government Service under the Ministry of Education, only the personal file and the confidential reports of the applicant were before the Public Service Commission as he was the only candidate serving under the Public Service Law of 1967 (Law 33/67), whereas the other candidates, including the interested parties, were serving under the Public Education Service Law of 1969 (Law 10/69).

25 According to a comparative table showing particulars of the Government Service and the qualifications of the applicant and the interested parties, the applicant was appointed as a Clerical Assistant, General Clerical Staff (Unestablished) on 13.8.1956 and was made permanent on 1.3.1958. On 1.2.1966 he was
30 promoted to Clerk 2nd Grade and on 1.12.1967 he became a Secretary/Library Supervisor in the Ministry of Education. His qualifications are the following:

- (i) Diploma in Byzantine music 1961-1962;
- 35 (ii) Participation in a UNESCO Course for Teachers of Librarianship from 1.8.1970 to 30.11.1970; and
- (iii) MA of Library Studies 1976.

Interested party Elli Constantinou was appointed as a Second-

ary Education School Mistress on 7.1.1965 and as from September 1973 she was serving on secondment in the Ministry of Education as an Assistant Cultural Officer. Her qualifications are the following:

- (i) Degree of the University of Athens (Philosophy) 1959 to 1964 and was registered as Post Graduate student at the Birkbeck College of the London University for two years. 5

Interested party Stelios Hadjistyllis, was first appointed as a Secondary Education School Master (Temporary) on 16.10. 1967 and was made permanent in that post on 1.9.1968. At the time he applied for the said post he was serving on secondment in the Ministry of Education as an Assistant Cultural Officer. His qualifications are the following: 10

- (i) Degree of the University of Athens (Philosophy) 1961–1966; 15
- (ii) Master of Arts (MA) with distinction, of the University of Sheffield 1971–1973; and
- (iii) Studying for Ph.D. course.

The trial Judge in his judgment, after summarising the arguments of counsel for the parties, in annulling the decision of the Public Service Commission had this to say at page 35 of the record: 20

“I have considered very carefully the submission of both counsel and I have decided for the reasons I shall give later on, to deal only with the two important issues raised during the argument, viz. (a) whether the Commission erred in being unduly influenced from the interview; and (b) once, as it was said earlier, the applicant had an additional post-graduate qualification which was an advantage and no reference at all was made by the Commission regarding that qualification. 25 30

In 1975, dealing with the very same point, regarding the impression created by such interview and the weight to be attached thereto, I had this to say in *Panayiotis Ioannou Myrtilotis v. The Republic (Educational Service Commission)*, (1975) 3 C.L.R. 58, at p. 68:– 35

5 'However, there is a further point which is worrying
me in this case, because in one of the minutes of the
Committee, during the interview of the many candi-
dates who appeared before them they stated that they
have also taken into account the impression created
by such candidates. Regretfully, no specific reference
was made with regard to the interested parties and the
applicant, and although I do not underestimate their
difficulties, nevertheless, once the Committee in pro-
10 moting the two interested parties in preference and
instead of the applicant, took that also into consider-
ation, one would have expected a note to have been
made of their impressions regarding the three candi-
dates. Of course, I do not want to be taken that I
15 do not approve of such a practice, because certainly
the Committee, in considering the merits, qualifications
and experience of a candidate may also take into
account the impression created by such candidate
at the relevant interview. However, I would like
20 to point out that such interview should be held only
as a way of forming an opinion about the possession
by the candidates of the required qualifications, and
undue weight should not, therefore, be placed on the
impression created by such interview' ”.

25 In *Andreas Triantafyllides and Others v. The Republic (Public
Service Commission)* (1970) 3 C.L.R. 235, Triantafyllides J.,
as he then was, had this to say on this point:-

30 “It should be observed that it was not right to treat the
performance at the interviews as something apart from the
merits, qualifications and experience of the candidates;
it was only a way of forming an opinion about the posses-
sion by the candidates of the said basic criteria; and not
the most safe way because, inter alia, of the necessarily
rather short duration of each interview and of the undeniable
35 possibilities of an adroit candidate making the Commission
think more highly of him than he deserves or of a timid
or nervous candidate not being able to show his real merit..

40 See also the case of *Andreas Savva v. The Republic of
Cyprus, through The Public Service Commission*, not yet
reported dated 22nd November, 1980, in which I have cited
and reviewed a number of cases”.

The trial Judge then, on the first issue as to whether the Commission erred in being unduly influenced from the interview, concluded as follows:

“In the light of these judicial pronouncements and because the Commission has given undue weight on the performance of the candidates during the interview, I find myself in agreement with the submission of counsel for the applicant, that the Commission has erred in law in giving undue weight to the performance, and acted contrary to the well settled principles of administrative law”.

No doubt, the Commission in considering the merits, qualifications and experience and, generally, the suitability of a candidate to a given post, should also take into account the impression created by such candidate at the relevant interview. We do not, however, agree with the proposition that such interview should be held only as a way of forming an opinion about the possession by the candidates of the required qualifications.

In the case in hand, we must say straight away that there is nothing in the minutes of the Public Service Commission of the 17th December, 1977, when the decision to appoint the two interested parties was taken, indicating that undue weight was placed on the impression of the candidates created by such interview, but, on the contrary, we are of the view that the Public Service Commission placed the proper weight which the facts and circumstances of the case deserved.

On the second issue as to whether the Commission had to make specific reference regarding the additional qualifications of the applicant, the trial Judge had this to say at page 37 of the record:

“Turning now to the second question as to whether the Commission has failed to carry out an inquiry as to whether the applicant possessed a post-graduate qualification, unfortunately nothing appears in the minutes of the Commission, and no one made any reference at all to it during their deliberations. Indeed, I would go further and state that although reference was made by the Commission in the minutes to the personal files and the annual reports of the candidates already in the service, nevertheless, counsel for the respondent, quite rightly in my view,

conceded that the only documents before the Commission were those of the applicant only, which shows in my view that no proper inquiry has been carried out by the Commission. If authority is needed I think the case of *Vasso Tourpeki v. The Republic (Public Service Commission)* (1973) 3 C.L.R. 592 provides the answer. Mr. Justice A. Loizou dealing with this point, said at pp. 602, 603:-

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'The general reference to the qualifications of all the candidates serving in the post, does not, in my view, sufficiently disclose whether such material fact, as the possession or not, of a qualification possibly constituting an additional advantage was duly inquired into, and in particular in view of the fact that the details of this course were not in the relevant file before the Commission, but in the possession of the Ministry. Consequently, I find that the Commission has not conducted the sufficiently necessary inquiry into such a most material factor and, therefore, it exercised its discretion in a defective manner so the sub-judice decision of the respondents having been arrived at contrary to the accepted principles of Administrative Law and in abuse or excess of powers, is null and void and of no effect whatsoever.

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Moreover, the outcome of such inquiry should have appeared in the reasoning of the sub-judice decision and in case it was found by the Commission that the diploma possessed by the applicant was constituting an advantage, then convincing reasons should have been given for ignoring it, inasmuch as the interested party was holding the lower post on secondment, as against the applicant who had been holding same substantively, such preferment, as already stated, constituting an exceptional course. I, therefore, annul the decision for lack of due reasoning which makes the sub-judice decision contrary to law and in excess and abuse of power'".

Before proceeding to consider the second issue, we must say that the statement by the trial Judge that "the only documents before the Commission were those of the applicant only", is

not accurate. What counsel for the Republic conceded was that as regards the personal files and the confidential reports only those of the applicant were before the Public Service Commission. But before the said Commission were also the applications of all the candidates, including those of the applicant and the interested parties. In these applications, among other things, the qualifications and the relevant certificates of the candidates, their profession or occupation from completion of their education, their Government service and other relevant requirements, appear. Photocopies of the applications of the interested parties were produced before us at the hearing of this appeal. It is clear from the contents of these applications and the documents attached thereto, that both interested parties possess the additional qualification provided by the scheme of service and that at the time they were educationalists serving on secondment as Assistant Cultural Officers in the Ministry of Education. In fact, as regards interested party Elli Constantinou the following is stated in a Certificate from Birkbeck College of the London University:

“I write to certify that Mrs. Elli Constantinou was registered for two years from October, 1968 till September, 1970, as a post-graduate student of this College for the degree of M. Phil. in the University of London. During these two years she pursued her studies diligently, regularly and I very much regret that she had to interrupt them for family reasons. I would recommend her without hesitation for any post calling for scholarship, judgment, common sense and hard work.”

As regards interested party Hadjistyllis, besides being a student for his Ph. D. degree, a copy of a Certificate from the University of Sheffield, attached to his application, reads as follows:

“It is hereby certified that Stylianos Achilleos Hadjistyllis having fulfilled the requirements prescribed by Ordinances and after due examination, was admitted to the degree of M.A. with distinction, of this University on 29th November, 1973.”

Although the said applications were not produced before the trial Judge, all the information required to the effect that the interested parties possess the additional qualification appears in

the comparative table, which was before the trial Judge, and which is usually prepared on the basis of the documentary and other evidence before the Public Service Commission to facilitate the proceedings at the trial.

5 That the interested parties possessed the additional qualifications was all along the argument of Counsel for the Republic before the trial Judge. In fact, the trial Judge in his judgment, with reference to the qualifications of the interested parties, records verbatim what is stated in the comparative table on the
10 issue of qualifications.

It is clear from the judgment of the trial Judge that, in dealing with the second issue, i.e. the additional qualification of the applicant, took it for granted that the interested parties did not possess this additional qualification, inspite of the fact that as it
15 is stated earlier on in this judgment, in dealing with the qualifications of the applicant and the interested parties he cited verbatim the contents of the comparative table. On the assumption that the interested parties did not possess the additional qualification, the trial Judge relied on the *Tourpeki* case, supra, in
20 support of his view that no proper inquiry was carried out and no due reasoning was given by the Public Service Commission as to why they did not select the applicant instead of the interested parties.

In the case in hand, however, both the applicant and the interested parties possessed the additional qualifications and so no
25 specific reference was required to be made by the Public Service Commission in its decision to the additional qualification of the applicant.

The case of *Tourpeki*, supra, is, therefore, distinguishable.

30 A. Loizou J. in a similar case, where again the respondent in this appeal was involved, namely, *Savvas L. Petrides and Another, v. The Republic through the Public Service Commission* (1982) 3 C.L.R. 914 at page 924 had this to say:

35 "In any event when the respondent Commission speaks of having considered the qualifications of all candidates, must be taken to have considered them as against the totality of the requirements of the scheme of service in relation to each of them and his qualifications. Once therefore, this addi-

tional qualification was part of those required under the scheme of service, and the respondent Commission stated that it had inquired into them, it cannot be validly argued that the matter was not duly inquired into and considered by the respondent Commission. There is, on the contrary 5
nothing to suggest that they omitted to examine same.

The case therefore of *Tourpeki* (supra) is distinguishable as in that case the applicant appeared to possess a qualification which might be considered under the relevant scheme, an additional advantage, which was not possessed by the 10
interested party chosen in her stead and no reasons were given for so ignoring such an advantage. No doubt in the present case, the Commission carried out a due inquiry and gave sufficient reasons on the subject."

The trial Judge, after dealing with the two issues as herein- 15
before set out, proceeded further and decided that he would annul the decision of the Public Service Commission for lack of due reasoning also. At page 38 of his judgment the following is stated:

"But I would go further and state that in the present case, 20
and in view of the fact that the Commission had before it the personal file of the applicant, I think, it was bound to give due reasoning why the applicant was not preferred. If further authority is needed on this point I think the case of *Kyriacos G. Bagdades v. The Central Bank of Cyprus* (1973) 25
3 C.L.R. 417, makes it very clear that reasons are needed. In delivering this judgment I had this to say at pp. 428, 429:

'..... I think I ought to reiterate what I said in *Papazachariou v. The Republic*, (1972) 3 C.L.R. 486, that 30
due reasoning must be more strictly observed in the case of a decision having been taken by a collective organ, and particularly when such decision is unfavourable to the subject. The whole object, of course, of such rule is to enable the person concerned as well as the Court, on 35
review, to ascertain in each particular case whether the decision is well-founded in fact and in accordance with the law. *HadjiSavva v. The Republic* (1972) 3 C.L.R. 174'"

It is clear that the trial Judge based his decision on this issue again on the assumption that the interested parties did not possess the additional qualification and, consequently, according to the established principles of administrative law, since the applicant
5 had better qualifications cogent and specific reasons should appear in its decision as to why the applicant was not selected for appointment which, as we have already said, is not the case.

Before concluding our judgment, we shall deal briefly with two points raised in this appeal by counsel for the respondent
10 which were also argued before the trial Judge, namely, the absence of the Director-General of the Ministry of Education from the relevant meeting of the Public Service Commission and the fact that the personal files and confidential reports of the interested parties were not before the Commission. On the
15 above points counsel for the respondent submitted that the absence of the Director, as well as the absence of the files of the interested parties, resulted in the lack of due enquiry and due reasoning by the Public Service Commission. He further argued that the Cultural Officer of the Ministry as it appears from the
20 minutes of the meeting of the 17th December, 1977, did not only help the Commission at the interview of the candidates by putting questions to them but proceeded further and recommended only two candidates, namely, Eleni Nikita and Elli Constantinou who were working under him. This, he added, placed the respondent
25 in this appeal in a disadvantageous position. Had the Director-General been present, certainly he would recommend his client for appointment to the post in question who had excellent confidential reports. He also argued that all the material required for reaching a just and proper decision was not before the Com-
30 mission due to the absence of the files of the interested parties.

In dealing with the allegation of counsel that the Cultural Officer recommended for appointment the two interested parties, we must say that this is not borne out from the minutes of the Commission, but, on the contrary, it is clear from the said mi-
35 nutes that after the Commission selected the two interested parties and Eleni Nikita as the most suitable candidates, the Cultural Officer expressed the view that he preferred Eleni Nikita instead of Stelios HadjiStyllis. This view was not followed by the Public Service Commission and so it cannot be said that the
40 opinion of the Cultural Officer, in any way influenced its deci-

sion. We are also of the view that the absence of the files of the interested parties before the Public Service Commission did not affect the root of the matter as besides the post in question being a first entry post, all the required material for a proper inquiry was before the Commission and was included in, or attached to the applications of the candidates. 5

In the present case it is clear from the material before us that the Public Service Commission evaluated correctly the qualifications and generally, the suitability of the candidates having duly enquired into the matter. This is obvious from its decision where full reasons are given as to why they selected the interested parties. 10

For the reasons stated above we allow the appeal.

On the question of costs we make no order.

Appeal allowed. No order as to costs. 15